

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

AUG 24 2011

MICHAEL J. ROEMER, CLERK
WESTERN DISTRICT OF NY

AUG 24 2011

MICHAEL J. ROEMER, CLERK
WESTERN DISTRICT OF NY

THOMAS B. SIMCOE,
Plaintiff,

v.

NOTICE OF MOTION FOR
CONTEMPT
Civ. No. 10-CV-6531Fe

LT. TIMOTHY GRAY, NTPD,
OFFICER JEFFERY SMITH, NTPD,
OFFICER KEITH GLASS, NTPD,
Defendants.

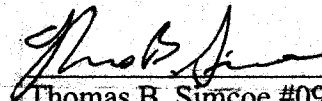
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Plaintiff moves the Court for an Order against FBI Special Agent Laurie Bennett for contempt of this Court upon the grounds set forth in the affidavit of Thomas B. Simcoe, attached and made a part of this motion.

If the person upon whom service is made fails to comply with the subpoena and makes no objections, the party serving the subpoena may act pursuant to Rule 45(f) and initiate a motion for contempt. Or in the alternative the Court may construe this motion as a motion for an Order to produce the documents requested in the subpoena deuces tecum, Rule 45(c). (Copy of subpoena is attached).

Date:

Aug 19, 2011

 Pro Se
Thomas B. Simcoe #09B0277
Attica CF
Box 149
Attica, New York 14011-0149

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

-----X
THOMAS B. SIMCOE,
Plaintiff,

v.

LT. TIMOTHY GRAY, NTPD,
OFFICER JEFFERY SMITH, NTPD,
OFFICER KEITH GLASS, NTPD,
Defendants.
-----X

AFFIDAVIT IN SUPPORT OF
MOTION FOR CONTEMPT
Civ. No. 10-CV-6531Fe

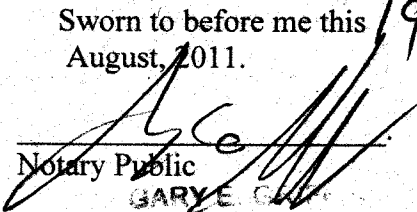
State of New York)
County of Wyoming):

I, Thomas B. Simcoe having first been duly sworn, deposes and says:

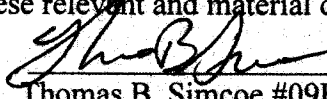
1. That a Court issued subpoena was served on FBI Special Agent Laurie Bennett by registered mail. It was signed for but the receipt was not dated. The Court received the return receipt on July 25, 2011. See attached copies.
2. That as of this date, August 19, 2011 no objection nor any reply has been received by the plaintiff in response to this subpoena. The subpoena required production of the documents "within 21 days after service."
3. That the subpoenas were properly served and the defendants were served with copies of both subpoenas. An affidavit of service was sent with the subpoenas to the court clerk. The other subpoena was for service on the Niagara County D. A. Michael Violante.
4. That the defendants only objected to the subpoena served on the Niagara County District Attorney. No objection was received concerning the subpoena directed to Special Agent Bennett.
5. That a motion to compel the DA for production has been filed with the Court.

WHEREFORE, the Plaintiff prays that an Order be issued for contempt or in the alternative an Order compelling the production of these relevant and material documents.

Sworn to before me this 19 day of
August, 2011.


Notary Public

GARY E. CLARK
NOTARY PUBLIC, STATE OF NEW YORK
REGISTRATION No. 01GR6126903
QUALIFIED IN ERIE COUNTY
My Commission Expires May 18, 2013

 Pro Se
Thomas B. Simcoe #09B0277
Attica CF
Box 149
Attica, New York 14011-0149

U.S. Department of Justice
United States Marshals Service**PROCESS RECEIPT AND RETURN**See Instructions for "Service of Process by the U.S. Marshal"
on the reverse of this form.

PLAINTIFF <u>Thomas B. Simcoe 09B0277</u>	COURT CASE NUMBER <u>6:10-CV-06531(JWF)</u>
DEFENDANT <u>Lt. Gray, Ofcs. Smith, and Glass NTPD</u>	TYPE OF PROCESS <u>Subpoena</u>
SERVE <input checked="" type="checkbox"/> NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN <u>Special Agent Laurie Bennett, FBI (Buffalo Office)</u>	
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) <u>1 FBI Plaza Buffalo, NY 14202</u>	
AT <input checked="" type="checkbox"/>	

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

Thomas Simcoe 09B0277
Attica CF
Box 149
Attica, NY 14011-0149

Number of process to be served with this Form - 285

1

Number of parties to be served in this case

1

Check for service on U.S.A.

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

Fold FBI - Buffalo Office

Fold

Signature of Attorney or other Originator requesting service on behalf of:

Thomas B. Simcoe☒ PLAINTIFF
☐ DEFENDANT

TELEPHONE NUMBER

DATE

7/14/11**SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE**I acknowledge receipt for the total number of process indicated.
(Sign only first USM 285 if more than one USM 285 is submitted)

Total Process

1

District of Origin

No. 55

District to Serve

No. 55

Signature of Authorized USMS Deputy or Clerk

Mary Ellen Adm. Sup. 07-21-11Date 13I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☒ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.

Address (complete only if different than shown above)

Date of Service

Time

Signature of U.S. Marshal or Deputy

M. E. Adm.

Service Fee <u>\$8.00</u>	Total Mileage Charges (including endeavors) <u>5.59</u>	Forwarding Fee <u>-0-</u>	Total Charges <u>\$13.59</u>	Advance Deposits <u>-0-</u>	Amount owed to U.S. Marshal or <u>-0-</u>	Amount of Refund <u>0</u>
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REMARKS:

07-21-2011: mailed Certified Return Receipt # 7009 1680 0000 8824 4635.
07-25-2011: Certified Del. Rec. card was received at USMS but NOT dated; signed by Maryann Wyman (?).

NOTEPRIOR EDITIONS
MAY BE USED**3. NOTICE OF SERVICE**

FORM USM-285 (Rev. 12/15/09)

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

F.B.I. - to be FORWARDED:
 ATTN: SA Laurie Bennett
 4 FBI Plaza
 Buffalo, N.Y. 14202

2. Article Number

(Transfer from service label)

7009 1680 0000 8674 4635

PS Form 3811, February 2004

Domestic Return Receipt

102596-02-M-1840

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Maryanne [Signature]*

- ☐
- Agent
-
- ☐
- Addressee

B. Received by (Printed Name)

Date of Delivery

- D. Is delivery address different from item 1?
 If YES, enter delivery address below
- ☐
- Yes
-
- ☐
- No

3. Service Type

- ☒
- Certified Mail
- ☐
- Express Mail
-
- ☐
- Registered
- ☒
- Return Receipt for Merchandise
-
- ☐
- Insured Mail
- ☐
- C.O.D.

4. Restricted Delivery? (Extra Fee)

- ☐
- Yes

 US MAIL SERVICES
 NEW YORK
 JUL 25 PM 2 10

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of New York

SIMCOE,

Plaintiff

v.

GRAY,

Defendant

Civil Action No. 10-cv-6531

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Special Agent Laurie Bennett FBI (Buffalo Office)
1 FBI Plaza
Buffalo, NY 14202

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Any investigation and interview notes, e-mails, letters, pertaining to Thomas Simcoe's formal complaint to your office against North Tonawanda PD officers Lt. Gray, Ofcs. Jeffrey Smith & Keith Glass (2007-2008 time frame). Any other documentation relating to complaints against these officers. Form requested is paper documentation. Send relevant documents to:

Place: Thomas Simcoe 09B0277

Attica CF

Box 149

Attica, NY 14011-0149

Date and Time: Comply within 21 days
after service

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 03/21/2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

Simcoe, Pro Se

, who issues or requests this subpoena, are:

Thomas
Thomas Simcoe 09B0277
Attica CF
Box 149
Attica, NY 14011-0149

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
COUNTY OF WYOMING) S.S.:

I, Thomas Simcoe being duly sworn, depose and says:

that on the below indicated date of notarization, I served
true and accurate copies of the attached/enclosed:

to the following person(s) at the following address(es):

Webster Szanyi LLP
Mr. Grancy or
Ms. Parzynieso
1409 Liberty Building
Buffalo, NY 14202

and FBI
Special Agent Laurie Bennett
1 FBI Plaza
Buffalo, NY 14202

by sealing the same in a properly addressed, postage prepaid
wrapper and by depositing same in a mailbox at the Attica
Correctional Facility to be mailed via United States mail.

Thomas B. Simcoe

Attica Correctional Facility
Post Office Box 149
Attica, New York 14011-0149

Subscribed and sworn to before me this

19 day of AUG, 2011

Gary E. Griffin
Notary Public

GARY E. GRIFFIN
NOTARY PUBLIC, STATE OF NEW YORK
REGISTRATION No. 01098120000
QUALIFIED IN ERSE COUNTY
My Commission Expires May 16, 2013